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C O N F I D E N T I A L SECTION 01 OF 05 NEW DELHI 003603

SIPDIS

PASS TO NRC

E.O. 12958: DECL: 05/13/2015

TAGS: [PREL](#), [ETTC](#), [MNUC](#), [IN](#), [GOI](#)

SUBJECT: ASSESSING OF INDIA'S DRAFT EXPORT CONTROL  
LEGISLATION

REF: A. NEW DELHI 3529

[1](#)B. NEW DELHI 3392

[1](#)C. NEW DELHI 3270

Classified By: Charge Robert O. Blake, Jr., for Reasons 1.4 (B, D)

[1](#)1. (SBU) Summary: Our initial review of the "Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Bill, 2005" (Bill No. 70), suggests the draft legislation is a comprehensive statute that meets NSSP Phase Two requirements that the GOI introduce stronger export control legislation. Although we have to see how the legislation is implemented, the bill is ambitious and the speed with which it has sailed through the government is a major achievement for the GOI and a clear indicator of its commitment to nonproliferation and the US-India relationship. The legislation was introduced in Parliament on May 10, and debate began on May 12. The government is pushing hard for passage before Parliament adjourns on May 13. A copy of the document has been transmitted to SA/INS. End Summary.

[1](#)2. (SBU) Following its rapid approval by the GOI Cabinet (Ref B), Embassy received an advance copy of the WMD bill on May 10. An initial review of the text indicates that earlier reporting on the contents of the bill was fairly accurate (Ref C), and that the law is ambitious in its scope and contains stringent penalties for violation of its provisions. (Note: One difference in the draft bill from previous reporting is a reduction in the minimum fine for a violation from five lakh rupees (approx. \$11,000) to three lakh rupees (approx. \$7000). End Note.)

[1](#)3. (SBU) The scope and application of the bill is extensive, indicating that the GOI is determined to enshrine its self-described "pristine" nonproliferation record in law. The law also seems to seek to establish India as a self-declared "Nuclear Weapons State," abiding by its international commitments, i.e., UNSCR 1540, and the Chemical Weapons and Biological Weapons Conventions.

[1](#)4. (C) The bill appears to meet the requirements outlined in Phase Two of the NSSP, namely, to introduce export control legislation that covers intangible technology transfers, brokering, transit, re-export, and catch-all controls. A copy of the text of the bill has been transmitted to SA/INS. Its major elements are described below:

Objectives: NWS and Nonproliferation  
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[1](#)5. (U) Notably, the GOI declares itself a "Nuclear Weapons State" in the opening sentence of the Preamble and reiterates its commitment to nonproliferation: "Whereas India is determined to safeguard its national security as a Nuclear Weapons State; and whereas India is committed not to transfer nuclear weapons or other nuclear explosive devices, or to transfer control over such weapons or explosive devices, and not in any way to assist, encourage, or induce any other country to manufacture nuclear weapons or other nuclear explosive devices..."

Extent and Application of Law  
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[1](#)6. (U) The bill claims broad jurisdiction over the area and entities subject to the law. Clause 3 states the law applies to every person in India and its Exclusive Economic Zone (360 km from its coast), as well as to "citizens of India outside India; companies or bodies corporate, registered or incorporated in Indian or having their associates, branches or subsidiaries, outside India; any ship, aircraft or other means of transport registered in India or outside India, wherever it may be; foreigners while in India; and persons in the service of the Government of India, within and beyond India."

[1](#)7. (U) Clause 3 goes on to define the application of the law to "export, transfer, re-transfer, transit and transshipment of material, equipment or technology of any description as are identified, designated, categorized or considered necessary by the Central Government, as pertinent or relevant to India as a Nuclear Weapon State, or to the national security of India, or to the furtherance of its foreign

policy or its international obligations under any bilateral, multilateral or international treaty, Covenant, Convention or arrangement relating to weapons of mass destruction or their means of delivery, to which India is a Party."

#### Intangible Technology Transfers

18. (U) The bill consistently references limits on any material, equipment, or technology that may be used in the design or manufacture of WMD. The concept of "intangible technology transfer" is encompassed by the definition of "technology" in Clause 4 which includes "all items and services which are provided or used, or which are capable of being used, in the development, production or use of such (WMD) technology or goods."

#### Brokering

19. (U) Brokering is specifically cited in Clause 12: "No person who is a resident in India shall, for consideration under the terms of an actual or implied contract, knowingly facilitate the execution of any transaction which is prohibited or regulated under this Act."

#### Transit and Re-export

10. (U) Various forms of transit and transfer are defined in Clause 4, as follows:

-- "'Brought in transit' means to bring goods from any country into India by land, air or amphibious means of transportation, where the goods are to be taken out from India on the same conveyance on which they are brought into India without any landing in India."

-- "'Retransfer' means transfer of any item notified under this Act from any country or entity to which it has been exported from India, to yet another country or entity."

-- "'Transship' means to remove goods from the conveyance on which they were brought into India and to place the goods on the same or another conveyance for the purpose of taking them out of India, where these acts are carried out on a "through bill of lading," "through airway bill," or "through manifest."

11. (U) Clause 13 of the bill regulates transit and transfer activities:

-- "(A) No item notified under this Act shall be exported, transferred, re-transferred, brought in transit, or transshipped except in accordance with the provision of this Act or any other relevant Act;

-- "(B) Any transfer of technology of an item, whose export is prohibited under this Act or any other relevant Act related to relevant activities shall be prohibited;

-- "(C) When any technology is notified under this Act or any other relevant Act, as being subject to transfer controls, the transfer of such technology shall be restricted to the extent notified thereunder;

-- "(D) The Central Government may notify any item as being subject to the provisions of this Act, whether or not it is covered under any other relevant Act, and when such item is exhibited, sold, supplied or transferred to any foreign entity or a foreigner who is resident, operating, visiting, studying, or conducting research or business within the territorial limits of India, or in its airspace or Exclusive Economic Zone, it shall constitute an offense."

#### Capturing the "Catch-All" Concept

12. (U) Although the term "catch-all" is not specifically used in the text, the concept is captured in several references to GOI authority to designate items of concern, such as in Clause 11: "No person shall export any material, equipment, or technology knowing that such material, equipment, or technology is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device, or in their missile delivery systems." The law also seeks to grapple explicitly with the cutting edge problem of proliferation involving non-state actors in Clause 9: "No person shall, directly or indirectly, transfer to a non-State actor or terrorist, any material, equipment and technology notified under this Act or any other Act related to relevant activity." The bill goes on to specify punishment for any person caught aiding and abetting non-State actors, ranging from a jail term of five years to life imprisonment.

## Delegation of Powers

¶13. (U) Clause 7 states, "The Central Government shall have the power to direct or assign to any authority, in such manner as it may deem appropriate, such powers as may be necessary to implement the provisions of this Act."

## Pending Questions

¶14. (SBU) Our initial reading of the bill raises several questions about the law and its implementation:

-- Per Clause 7, will the GOI create a new entity to implement this law or would a current body (e.g., the Inter-Ministerial Working Group that currently reviews export licenses or the Director General of Foreign Trade) be given new authority to implement the bill's provisions?

-- Will adequate resources be allocated for effective implementation and enforcement?

-- Will the GOI issue a list of controlled items under this law, and if so, will that list be harmonized with existing international lists?

-- Will the GOI begin to systematically monitor its ports to ensure compliance, i.e., without outside notification or intervention?

¶15. (SBU) Dr. G. Balachandran, an independent consultant who has done extensive research on Indian, US, and international export control regimes, assessed the draft legislation in a discussion with PolMilOff on May 11. He noted that the broad jurisdiction of the law closely follows similar provisions in US export control law, e.g., applicable to all US citizens, regardless of their location. He raised similar questions as above about how the bill would be implemented, and especially about the need for the GOI to revise its control lists. According to Dr. Balachandran, the GOI is currently drafting a new control list which should be released "soon." He did not know whether the new list would be harmonized with current international lists or whether it would simply be an annex to India's existing control list, SCOMET. Dr. Balachandran believed that there is broad support for the draft bill and did not foresee problems with passing it, even in the short time left of the current session of Parliament.

## Race Against the Clock

¶16. (U) The bill was introduced in the Lok Sabha (Lower House) late in the day on May 10 and in the Rajya Sabha (Upper House) on May 12. Both houses may either discuss and vote on the bill or send it to their respective Standing Committee for hearings (where some bills languish). The Lok Sabha debate began on May 12. If both houses pass the bill with a two-thirds majority, it will become law. If either house sends the bill to its respective Standing Committee, the bill will not re-surface until the "Monsoon session" of Parliament in July.

¶17. (U) If Parliament does not vote on the bill, the Prime Minister may intervene and sign the bill into law temporarily as an Ordinance (as happened for the Patent Act, and the Prevention of Terrorism Act). Passing a bill by Ordinance is only a temporary measure, however, because the law expires six weeks after the next session of Parliament. Further, signing a bill into law as an Ordinance would have to be done before the bill is sent to the Standing Committee.

¶18. (U) The May 12 "Indian Express" reports that an agreement was reached among Left parties and the Ministers of External Affairs, Defense, and Parliamentary Affairs, among others, to push the bill through both houses of Parliament before adjournment. According to the May 10 "Indian Express," before the bill was introduced, the UPA sought a waiver to prevent the bill from being referred to the standing committees to ensure a vote before Parliament adjourns.

## Opposition Recognizes Spin-off Benefits

¶19. (U) An editorial in the pro-BJP "Pioneer" on May 12 highlights reasons for passage of this bill (albeit, with the participation of Opposition parties that are currently boycotting Parliament). First, to prove -- namely, to the US -- that New Delhi is a mature nuclear power with an established command-and-control structure to safeguard against black-marketing of sensitive technology. Second, to overcome the "technical obstacles" enshrined in the Nuclear Suppliers Group (NSG) guidelines that limit India's access to civil nuclear technology and reactors. According to the "Pioneer," the law would facilitate Russia's potentially

very lucrative involvement in the Kundakulam reactor project for which India has sought four additional reactors:  
"Indeed, if Moscow does not allow itself to be distracted by Washington, it could initiate a hugely upgraded nuclear cooperation program with New Delhi designed to meet India's energy concerns through civilian nuclear power." Finally, passage of the law, coupled with India's adherence to other control regimes, would augment India's bid for permanent Security Council membership, according to the editorial.

Comment  
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120. (C) Embassy believes the draft legislation meets -- perhaps even exceeds -- NSSP Phase Two requirements that the GOI strengthen its export control law. The speed with which it sailed through the normally cumbersome inter-agency process indicates high-level support and, if passed by Parliament, would demonstrate broad political consensus for New Delhi's nonproliferation objectives. The devil, of course, will be in the details of implementing this ambitious legislation and, ultimately, allocating adequate resources.

121. (C) Save for a handful of articles in the Indian press, the rapid movement of this bill seems to have eluded most Indian media, as well as our interlocutors on various issues affected by export controls. Emboffs' contacts at the Ministry of Commerce and the Department of Energy (Ref A) had not seen the proposed bill before it was introduced in Parliament. Presumably, the process for establishing the regulations to implement the law will involve more labored consultations.

122. (C) In any case, this is a major step found on an issue that has been pending in our bilateral relationship since the 1990s. As we noted in Ref B, this would not have happened without a significant investment of political capital by the Prime Minister and his senior advisors. In this sense, this law is one more bellwether of the considerable importance that NPA government has assigned to its relationship with Washington.  
BLAKE